

2nd February 1963]

IV. GOVERNMENT BILLS.

- (1) THE MADRAS COMMERCIAL CROPS MARKETS (VALIDATION OF CESS) BILL, 1962 (L.A. BILL NO. 23 OF 1962).

THE HON. SRI P. KAKKAN : Sir, I move—

“ That the Madras Commercial Crops Markets (Validation of Cess) Bill, 1962* (L.A. Bill No. 23 of 1962) be taken into consideration. ”

In its judgment in Writ Petition No. 606 of 1957, the High Court of Madras has held, that in the absence of a Legislative provision regarding any policy or limits of assessment, for the guidance of the assessing authority, the provisions of section 11 (1) of the Madras Commercial Crops Markets Act, 1933, amount to excessive delegation of, legislative power and are therefore invalid. The above decision was upheld, by a Division Bench of the High Court, Madras. The result is that the levy and collection of cess under section 11 (1) of the Madras Commercial Crops Markets Act, 1933, is void and unenforceable and the dealers would be entitled to get refund of any cess levied or collected under that section on the ground of mistake of law.

The Madras Agricultural Produce Markets Act, 1959, has been brought into force on the 22nd October 1962, on which date, the Madras Commercial Crops Markets Act, 1933, stands repealed. The decision of the High Court would not affect the position under the Madras Agricultural Produce Markets Act, 1959, inasmuch as section 18 of that Act, provides for the maximum rate of levy of cess under that section. Hence the Government consider that the levy and collection of cess under the Madras Commercial Crops Markets Act, 1933, rendered invalid should be validated, lest the market committees concerned should suffer pecuniary loss consequent on the invalidity of such levy and collection already made. It is accordingly proposed, to validate the levy and collection of cess, by market committees, under the Madras Commercial Crops Markets Act, 1933, for the period prior to the 22nd October 1962.

The Bill seeks to give effect to the above objects.

This Bill was introduced in the Legislative Assembly, on the 2nd November 1962, the Thirteenth year of the Republic of India. As we are now in the year 1963, the Fourteenth Year of the Republic of India, certain formal amendments are necessary in the Bill which I shall move at the appropriate time.

MR. SPEAKER : The question is—

“ That the Madras Commercial Crops Markets (Validation of Cess) Bill, 1962 (L.A. Bill No. 23 of 1962) be taken into consideration. ”

* Published in the Fort St. George Gazette Extraordinary, dated 2nd November 1962.

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The motion was put and carried and the Bill was taken into consideration.

Clause 2 was put and carried.

Clause 3

MR. SPEAKER : The question is—

‘ That clause 3 do stand part of the Bill.’

SRI S. MADHAVAN : Sir, I move—

“ (i) In sub-clause (1) after the words ‘ Notwithstanding anything contained ’ in lines 8 and 9 insert the words “ in any law or ”.

“ (ii) and for the words ‘ not in accordance with law ’ in line 13 substitute the words ‘ made under Section 11 (1) of the Madras Commercial Crops Markets Act, 1933 ’.”

The amendment was duly seconded.

MR. SPEAKER : Now the clause and the amendments are before the House for discussion.

SRI S. MADHAVAN : Sir, I want to say a few words in respect of the amendments proposed by me. The amendments proposed are only formal in nature. The purpose of the Act is very clear from the Statement of Objects and Reasons. The principal Act is XX of 1933. Subsequently, in 1955, Section 11 (1) was brought and incorporated in the principal Act. That Section 11 (1) has been declared as illegal on the principle of excessive delegation of power to the executive authority by the High Court of Madras. The decision has been reported in 1960-1 M.L.J. That has been confirmed by a judgment of the Division Bench. The principle on which the High Court decided is that without laying down any principle to determine the rate of tax or the maximum rate of tax the delegation of power to determine the tax by the executive authority is illegal. The general principle which is laid down by a number of decisions is that “ delegated legislation would be invalid if it amounts to the total abdication of the sanction of the Legislature in favour of the executive authority.” That principle I hope we all accept. But the result of the decision of the High Court will be that all levies made under Section 11 (1) are void and unenforceable. To validate those levies I think the present legislation has been brought before us. The principle on which the High Court decision has been made is on the principle of excessive delegation of power. So the words ‘ or in any law ’ are very necessary as proposed in my first amendment. They should be incorporated under clause 3 of the Bill. At this moment, I should like to say that these words viz., ‘ or in any law ’ are found in the amended Act of 1955. Therefore these words are necessary and they may be incorporated in the present Bill.

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With regard to amendment (ii) I should like to read the copy of the judgment of the High Court.

About Section 11, 1955 Act, His Lordship has observed.

“ I have already held that determination of the tax by the executive Government under Section 11 (1) was invalid, the power not having been validly delegated by the Legislature.”

So it has been clearly stated that all the levy under section 11 of 1955 amendment Act are invalid. So the words used under clause 3 of the present Act shall be deemed to be invalid on account of such levy or collection being not in accordance with law. These words are too general for the purpose of this Act. It will give room for various interpretation of the law by the various Courts of this land. So it is very necessary; it is better to say specifically as stated in my amendment viz., ‘not in accordance with law’ in line 13 substitute the words ‘made under section 11 (1) of the Madras Commercial Crops Markets Act, 1933.’ If we insert these words it will be free from any doubt and whatever collection is made under Section 11 of the 1955 Act will be made valid according to the present Act. With these words, I request the House to accept my amendments.

THE HON. SRI R. VENKATARAMAN : Mr. Speaker, Sir, the amendments proposed by the hon. Member, Sri S. Madhavan is on the lines of what we call the usual phraseology in law. Whenever we have a consolidating amendment Act we use the expression ‘notwithstanding anything contained in any law for the time being in force.’ But this is a validating Act which validates the levy of cess made in pursuance of the Act, 1933. The High Court held that the exercise of the power by the Government was excessive of jurisdiction. Therefore, it was not because there was anything contrary which is contained in the law that is sought to be amended. But it is the judgment of the High Court which made certain levy illegal and the levy has to be validated. Therefore, we have said in the section that “notwithstanding any judgment” and that is why we have omitted the words ‘notwithstanding any law for the time being in force.’ Since the object of the legislation is to validate the levy ‘notwithstanding any judgment or decree or order of any court’ this levy should be validated. It is superfluous and in fact it may be out of place to add in this particular context after the words ‘notwithstanding anything contained’ the words ‘in any other law.’

So far as the second amendment is concerned that the collection was made under Section 11 (1) of the Act as proposed by the hon. Member Sri S. Madhavan may not be appropriate in this case because that section has been held void and therefore that section does not exist in the Act itself. If any levy has been made in pursuance of the law, it is not in accordance with law. Then

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we say in spite of the fact that it was not 'in accordance with law' levy may be valid. In the validated Act we say that this was not in accordance with law and therefore we say that this may be validated. If we say that on other hand that the collection was made under Section 11, it would be presumed that Section 11 was valid law and if it was valid there is no need for the validation of the previous valid law. Sir, the point is very simple so far as legal position is concerned. If you say, that levy was not made in accordance with law it covers all the probable ways in which it was held to be not valid. But if you say that it was made under Section 11 which does not exist after the judgment, it is void according to the judgment. It will not convey what the Government wants to do viz., that this levy was made in accordance with law. Therefore, we want to validate. In the circumstances, either of these amendments are not acceptable to the Government.

The amendment was by leave, withdrawn.
Clause 3 was put and carried.

Clause 1 and the Preamble

THE HON. SRI P. KAKKAN : Sir, I move—

'That in the enacting formula, for the word "Thirteenth" substitute the word "Fourteenth".'

MR. SPEAKER : The question is—

'In the enacting formula, for the word "Thirteenth", substitute the word "Fourteenth".'

The amendment was put and carried.

THE HON. SRI P. KAKKAN : Sir, I move—

'In sub-clause (1) of clause 1, for the figure "1962" Substitute the figure "1963".'

MR. SPEAKER : The question is—

'In sub-clause (1) of clause 1, for the figure "1962", substitute the figure "1963".'

The amendment was put and carried.

Clause 1 and the Preamble, as amended, were put and carried.

THE HON. SRI P. KAKKAN : Sir, I move—

'that the Madras Commercial Crops Markets (Validation of Cess) Bill, 1962 (L.A. Bill No. 23 of 1962) as amended be passed'.

MR. SPEAKER : The question is—

'That the Madras Commercial Crops Markets (Validation of Cess) Bill, 1962 (L.A. Bill No. 23 of 1962) as amended be passed.'

The motion was put and carried and the Bill, as amended, was passed.